

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2002-410-C - ORDER NO. 2003-428

JUNE 25, 2003

IN RE: Application of NobelTel, LLC for a)	ORDER
Certificate of Public Convenience and)	GRANTING
Necessity to Provide Intrastate Resold)	APPLICATION
Interexchange Telecommunications Services)	
and for Modified Alternative Regulation of its)	
Business Service Offerings.)	

This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of the Application of NobelTel, LLC ("NobelTel" or "the Company") requesting a Certificate of Public Convenience and Necessity authorizing it to operate in South Carolina as a reseller of telecommunications services between and among locations within the State of South Carolina as a non-facilities based interexchange telecommunications service provider. The Company's Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 2002) and the Regulations of the Public Service Commission of South Carolina. By its Application, NobelTel also requests alternative regulation of its business services offerings with the same guidelines as those approved for similar interexchange carriers consistent with the principles and procedures granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. NobelTel further requests a waiver of 26 S.C. Code Ann. Regs. 103-610 which requires the Company keep its books and records in the State of South Carolina and for a waiver from the Commission's requirement that NobelTel maintain its

books and records in conformance with the Uniform System of Accounts (USOA). NobelTel requests that it alternatively be permitted to maintain its books of accounts in accordance with Generally Accepted Accounting Principles (GAAP).

The Commission's Executive Director instructed NobelTel to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the affected areas. The purpose of the Notice of Filing was to inform interested parties of NobelTel's Application and of the manner and time in which to file the appropriate pleadings for participation in the proceeding. NobelTel complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. No Petitions to Intervene or Protests were filed.

A hearing was convened on June 4, 2003, at 10:30 a.m. in the Commission's Hearing Room at 101 Executive Center Drive, Columbia, South Carolina. The Honorable Mignon Clyburn, Chairman, presided. NobelTel was represented by Scott Elliott, Esquire. F. David Butler, General Counsel, represented the Commission Staff.

Richard L. Mahfouz, General Counsel of NobelTel, appeared and testified in support of the Application. The record reveals that NobelTel is a Delaware corporation which is headquartered in California and is registered to conduct business in South Carolina as a foreign corporation. According to Mr. Mahfouz, NobelTel seeks authority to offer on a resale basis within South Carolina intrastate, interLATA and, to the extent authorized by the Commission, intraLATA direct-dialed services including (1+) service, flat rate service, 800 inbound service, and travel and prepaid calling cards. NobelTel is currently authorized to provide interexchange telecommunications services in 42 states

and the District of Columbia. NobelTel proposes to offer telecommunications services to both residential and commercial customers in South Carolina. NobelTel does not intend to install any transmission or switching facilities in South Carolina and will engage in “switchless” resale of services. Mr. Mahfouz explained the Company’s request for authority and the record reveals the Company’s services, operations, and marketing procedures.

Mr. Mahfouz also testified regarding NobelTel’s technical, financial, and managerial resources to provide the services for which it seeks authority to provide. Finally, Mr. Mahfouz testified that NobelTel will operate in accordance with Commission rules, regulations, guidelines, and Commission Orders. In this regard, he agreed to amend NobelTel’s proposed tariff in accordance with the recommendations of the Commission Staff, as detailed in the findings stated below.

Mr. Mahfouz also offered that approval of NobelTel’s Application would serve the public interest by allowing customers to obtain very competitive rates and services, by promoting efficient use of the underlying network, by increasing access revenues for underlying carriers, and by increasing tax revenue for the State of South Carolina.

After full consideration of the applicable law, the Company’s Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. NobelTel is organized as a corporation under the laws of the State of Delaware and is authorized to do business as a foreign corporation in the State of South Carolina by the Secretary of State.

2. NobelTel operates as a non-facilities based reseller of interexchange services and wishes to provide its services in South Carolina.

3. NobelTel has the experience, capability, and financial resources to provide the services as described in its Application.

4. NobelTel has agreed, through Mr. Mahfouz's testimony, to revise its proposed tariff filed with the Commission by adding language to Section 2 ("Rules and Regulations") of the Company's proposed tariff stating that: "The Company shall comply with the Rules and Regulations contained in Public Service Commission of South Carolina's Telecommunications Regulations."

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to NobelTel to provide intrastate interLATA service and to originate and terminate toll traffic within the same LATA, as set forth herein, through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), Foreign Exchange Service, Private Line Service, 800 inbound service, intraLATA direct dialed services, prepaid calling card or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. The Commission adopts a rate design for NobelTel for its resale of residential services which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

3. NobelTel shall not adjust its residential rates below the approved maximum level without notice to the Commission and to the public. NobelTel shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for residential services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 2002).

4. With respect to NobelTel's business service offerings, operator assistance, and customer network offerings, the Commission adopts a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in

Docket No. 95-661-C. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission. Any relaxation in the future reporting requirements that may be adopted for AT&T shall apply to NobelTel also. These alternative regulation orders were modified by Order No. 2001-997 in Docket No. 2000-407-C which imposed a cap on operator-assisted calls where a consumer uses a local exchange carrier's calling card to complete calls from locations which have not selected the local exchange carrier as their toll provider. The provisions of Order No. 2001-997 and this modification also apply to NobelTel.

5. If it has not already done so by the date of issuance of this Order, NobelTel shall file its revised tariff and an accompanying price list within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

6. NobelTel is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers and facilities-based interexchange carriers should be treated similarly.

7. With regard to the Company's resale of services, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

8. NobelTel shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If NobelTel changes underlying carriers, it shall notify the Commission in writing.

9. With regard to the origination and termination of toll calls within the same LATA, NobelTel shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX inter-LATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the FCC pursuant to the Telecommunications Act of 1996 (47 CFR 51.209). NobelTel shall comply with the imputation standard as adopted by Order No. 93-462 and more fully described in paragraph 4 of the Stipulation and Appendix B approved by Order No. 93-462.

10. As a condition of offering prepaid calling cards, NobelTel shall be required to post a surety bond or certificate of deposit in the amount of \$5,000.00 with this Commission prior to their offering such services in South Carolina. This requirement shall be reviewed on an annual basis.

11. NobelTel shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipts reports will necessitate the filing of intrastate information. Therefore, NobelTel shall keep financial records on an intrastate basis for South Carolina to comply with the annual report and gross receipts filings. The proper form for filing annual financial information can be found on the Commission's website at www.psc.state.sc.us/forms. The title of this form is "Annual Information on South

Carolina Operations for Interexchange Companies and AOS.” This form shall be utilized by the Company to file annual financial information with the Commission. Commission gross receipts forms are due to be filed with the Commission no later than October 1st of each year.

12. For good cause shown, NobelTel is granted a waiver and is hereby authorized to keep its books and financial records in accordance with Generally Accepted Accounting Practices rather than the Uniform System of Accounts method.

13. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. NobelTel shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The “Authorized Utility Representative Information” form can be found at the Commission’s website www.psc.state.sc.us/forms; this form shall be utilized for the provision of this information to the Commission. Further, the Company shall promptly notify the Commission in writing if the representatives are replaced.

14. The Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

15. NobelTel additionally requests a waiver of Reg. 103-610, which requires that records required by the Commission's Rules and Regulations be maintained in South Carolina. The record reveals that NobelTel's principal headquarters is located in Carlsbad, California, and NobelTel requests permission to maintain its books and records at its headquarters in that city and state. The Commission finds NobelTel's requested waiver reasonable and understands the difficulty presented to NobelTel should the waiver not be granted. The Commission therefore grants the requested waiver that NobelTel be allowed to maintain its books and records at its principal headquarters. However, NobelTel shall make available its books and records at all reasonable times upon request by the Commission or the Commission Staff and shall promptly notify the Commission if the location of its books and records changes.

16. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Mignon L. Clyburn, Chairman

ATTEST:



Gary E. Walsh, Executive Director

(SEAL)